
Appeal Decisions

Site visit made on 30 January 2020

by Brian Cook BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 12 February 2020

Appeal A: Appeal Ref: APP/Z5060/C/18/3214710

23 Salisbury Avenue, Barking IG11 9XQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr J Kratke against an enforcement notice issued by the Council of the London Borough of Barking & Dagenham.
 - The enforcement notice was issued on 11 October 2018.
 - The breach of planning control as alleged in the notice is without planning permission, the unauthorised conversion of the property into two independent units of accommodation.
 - The requirements of the notice are:
 - i) Cease the use as two independent units of residential occupation.
 - ii) Remove all alterations and fixtures enabling the conversion to two independent units of residential accommodation.
 - iii) Remove all consequent waste material from the land.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (d) of the Town and Country Planning Act 1990 as amended
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Appeal B: Appeal Ref: APP/Z5060/X/18/3214468

23 Salisbury Avenue, Barking IG11 9XQ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr J Kratke against the decision of the Council of the London Borough of Barking & Dagenham.
 - The application Ref 18/01345/CLU_E, dated 31 July 2018, was refused by notice dated 10 October 2018.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is retention of 2 residential flats.
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Decisions

Appeal A: Appeal Ref: APP/Z5060/C/18/3214710

1. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B: Appeal Ref: APP/Z5060/X/18/3214468

2. The appeal is dismissed.

Appeal A: the appeal on ground (d) and Appeal B

3. The notice alleges as the breach of planning control the development for which the LDC application was made and refused. Appeal A on ground (d) and Appeal B are therefore essentially the same although the material date in each is slightly different.
4. Where the development carried out in breach of planning control is the change of use of a single dwelling to self-contained residential accommodation, the local planning authority has a period of four years from the date when the breach first took place to take enforcement action. In this case, therefore, the appellant must show, on the balance of probabilities, that the Appeal A development began not later than 11 October 2014 and that the Appeal B development had started by 31 July 2014; these are the material dates for the two appeals.
5. In appeals of this nature the onus is on the appellant to show, on the balance of probabilities, that the development to which the ground (d) appeal relates and for which the LDC is sought began not later than the material date and continued substantially uninterrupted thereafter. If the Council has no evidence itself, nor any from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeals and refuse to grant the LDC, provided the appellant's evidence alone is sufficiently precise and unambiguous.

Evidence

6. The appellant's evidence is very limited. A Council Tax bill for both the ground and first floor flats has been provided but these relate to the period 2018/19 only. They say nothing therefore about any earlier period although they do confirm the appellant's address as 100 St Awdrys Road, Barking, Essex IG11 7QD.
7. Two statutory declarations were provided with the LDC application. Both are solemnly and sincerely declared under the provisions of the Statutory Declaration Act of 1835 by persons of 21 Salisbury Avenue. Both are signed and witnessed on 31 July 2018 although it is not clear if the witness is a solicitor or commissioner for oaths since the stamp refers to Fast Track Immigration Services Ltd. Both simply state that 'The property known as 23 Salisbury Avenue, Barking IG11 9XQ has been used and occupied as two flats for over 10 years.'
8. A further two statutory declarations have been submitted with the appeals. The first is by the appellant. This is sworn on 24 October 2018 under the 1835 Act and witnessed by a solicitor and commissioner for oaths. It states that the property was already converted into two flats when purchased by the appellant in May 2003 and that it has been occupied as two flats, either as short-term lets or holiday rentals, since August 2003.
9. The second was also sworn pursuant to the 1835 Act by John Thompson before a (different) solicitor also on 24 October 2018. This states that the property was used and occupied as two flats during his tenancy between 27 July 2009 and 1 September 2018. Although it does not unambiguously say so, I believe the inference that is meant to be drawn is that he was a tenant of one of the

two flats. The address he gives on the statutory declaration is the same as that given by the appellant on his, 100 St Awdrys Road, Barking IG11 7QD.

10. The Council's evidence contradicts that of the appellant. The Electoral Services Team have confirmed that from 2006 the appeal property has never been listed as two separate addresses on the Electoral Register. More significantly, the Council Tax Team confirmed that the flats were unlawfully created on 20 October 2015 and that the owner is currently liable for Council Tax at both properties. That corroborates the appellant's Council Tax bill evidence.

Appraisal and Conclusions

11. The two statutory declarations from persons at No 21 do not say what their connection with that property is, how long they have been associated with it or why they are so clear that the appeal property has been occupied as claimed by the appellant for 'over 10 years'. It is not clear why they both refer to a period (coincidentally the period given in s171B (1) of the Act after which immunity from enforcement action is established for development other than that which is the subject of these appeals) rather than a date after which the property became arranged as flats.
12. As already noted, it is not wholly clear that Mr Thompson was a tenant at the property itself and it is notable in my view that he does not say which of the two flats he occupied. While there is no ambiguity or lack of clarity within the statutory declaration of the appellant, there is no supporting evidence in the form of tenancy agreements, rent payments or other statutory declarations to show that occupancy of both flats has been substantially uninterrupted for the required period.
13. I acknowledge that statutory declarations solemnly and sincerely declared under the 1835 Act would normally attract considerable weight. However, when they are clearly and unambiguously contradicted by the Council's own evidence, the weight that they may be afforded is far more limited.
14. I therefore conclude that the appellant's evidence alone is not sufficiently precise and unambiguous in this regard. Appeal A on ground (d) therefore fails and Appeal B does not succeed.

Appeal A: the appeal on ground (a) and the deemed planning application

15. The terms of the deemed planning application are defined by the breach of planning control alleged. It is, in effect, a retrospective planning application for the development as it was when the notice was issued, but determined against the policies of the development plan and any other material considerations at the appeal decision date.
16. In my view, at the date of my site inspection, the accommodation on the first floor was no longer arranged as the two-bedroom self-contained flat shown on drawing ref: 078.18/02 Rev A. What is shown on that drawing as a living room had a double bed and a hand basin and appeared to be in use as a bedroom. The other two bedrooms were used as such. Each room had a locking door and there were toiletries and other personal hygiene items in each. In my opinion, the first floor had the appearance of a 3-bedroom house in multiple occupation (HMO), not a self-contained flat.

Main issues

17. Having regard to the reasons for the issue of the notice and my inspection of the property and the surrounding area I consider the main issues for my determination of this ground of appeal to be the effect of the development on:
- (a) The stock of 3-bedroom family housing in the area;
 - (b) The living conditions of the present and future occupants of the property itself and neighbouring properties; and
 - (c) On-street parking availability in the area.

The stock of family housing

18. The appeal property is a two-storey mid terrace dwelling in a road on the outer edge of a significant residential area characterised by similar properties. On the other side of the Avenue is a Network Rail yard and building and, beyond that, a number of railway lines which include the underground service giving direct access to central London from Barking station, a very short walk away. The station is within a busy shopping area.
19. Prior to the unauthorised development that is the subject of the notice the property would have contributed to the supply of family housing within the borough. While the Council recognises through its development plan policies the value of flats in providing a source of housing for smaller households, it wishes to balance this against the need to protect and increase the supply of family housing.
20. Policy BC4 of the Borough Wide Development Policies Development Plan Document (DPD), adopted in March 2011, gives policy effect to this objective and seeks to resist development proposals which involve the loss of housing with three bedrooms or more. While the policy permits flat conversions in other circumstances, none of those apply in this case. The development carried out therefore clearly conflicts with the development plan in this regard.

The living conditions of the present and future occupants of the property itself and neighbouring properties

21. From the reasons for issuing the notice, the Council's concern in this regard appears to be limited to what it regards as a material increase in levels of noise and disturbance arising from the occupation of the property as two self-contained flats rather than as a dwelling.
22. I note that the Planning Inspectorate did not receive any representations at all from local people in response to the Council's notification of the appeal. While not determinative, it may suggest that the Council's concern is unfounded. In principle, I see no reason why the development carried out should be intrinsically noisier or more disturbing than a single dwelling. That may not be the case where the first floor is occupied as a 3-bedroom HMO but that is not the subject of the deemed planning application.
23. In the absence of any evidence of actual as opposed to anticipated noise and disturbance, I do not believe the development conflicts with DPD policy BP8 in this regard.

On-street parking availability

24. This part of Salisbury Avenue is subject to on-street parking restrictions. On the opposite side of the road to the appeal property, parking is limited to 1 hour, Monday to Saturday between 8.30 and 17.30 with no return permitted. On the appeal property side, parking is restricted to permit holders only between the hours of 8.30 to 21.00, Monday to Saturday.
25. While the appellant states that the site offers substantial off-street parking, he has not identified where this is located and it was not pointed out to me during my site inspection.
26. That said, DPD policy BR9 confirms that the car parking standards set out in the London Plan will be used as maximum parking standards for new developments but does not say what those standards are. While the reasons for issuing the notice state that the development exacerbates the shortfall of car parking, the Council's statement of case makes no reference to this issue at all.
27. I acknowledge that a property arranged as two self-contained flats and thus occupied by two households is more likely to generate a demand for on-street parking than a single-family dwelling. Although the Council does have the means to manage the demand through the issue of residents' parking permits, the development is nevertheless likely to add to on-street parking pressures. In that regard, there is a conflict with DPD policy BR9.

Conclusion

28. I therefore conclude that the development carried out conflicts with the development plan on two of the three main issues identified. The appeal on ground (a) fails and planning permission for the deemed planning application will not be granted.

Overall conclusions

29. For the reasons given above I conclude that Appeal A should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.
30. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of retention of 2 residential flats. was well-founded and that Appeal B should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Brian Cook

Inspector